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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/670,010

09/24/2003

Daniel E. Doucette

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120 S. LASALLE STREET
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EXAMINER

DOOLEY, JAMES C

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/670,010	Applicant(s) DOUCETTE, DANIEL E.	
	Examiner James C. Dooley	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/08/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the utensil as described in claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The disclosure is objected to because of the following informalities: Use of the term "is provided" in the first sentence of the abstract. Later occurrence is permitted as it falls with the guidelines of being narrative.

Appropriate correction is required.

Claim Objections

Claim 3 is objected to because of the following informalities: "cover" should read "covers." Appropriate correction is required.

Claim 11 is objected to because of the following informalities: missing comma between "compartments" and "said cover." Appropriate correction is required.

Claim 19 is objected to because of the following informalities: space missing "claim18". Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. No description is given in the disclosure how a utensil could fit within the backcard.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as failing to distinctly claim the subject matter Applicant regards as their invention. Claim 11 includes the statement "a separate base portion on each of the container compartments." As is best understood from the disclosure, Applicant intended to define that all the compartments do not share a base. From the language used in claim 11, it could also be understood that the base portion is removable from the top wall, wherein no description of this nature is given in the disclosure.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such

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omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The amount and plane of of material included with the phrase "surrounding backcard material." Does surrounding material include all the material on the outerlayer of the backcard, any material contacting the hanging feature (including the inner layer), or cut edges of the outer layer immediately in contact with the hanging feature?

6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant lists the hanging feature as both; "being and capable of being pulled outward." The subject matter claimed is unclear.

7. The term "major" in claim 11 is a relative term which renders the claim indefinite. The term "a major portion" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore the portion of the backcard, which is planar and free of holes, is not distinctly claimed.

8. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "may" is indefinite. The office recommends language such as "is capable of" or "can."

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (US patent 5,570,782) alone. Kikuchi discloses a hangable product display featuring:

- a. A card body (1)
- b. An inner layer (2) for attaching to an article (122)
- c. An outer layer (4) secured to the inner layer (col. 2 ln. 39-41) having an upper portion (4f) and a lower portion (4g)
- d. A hanging feature (21) in the upper portion of the outer layer (col. 3 ln. 43-44) which is moveable from a position in the plane of
- e. the outer layer to an extended position out of the plane of the outer layer for hanging the card and the article attached thereto (col. 3 ln. 46-51)
- f. A lower half of the card having a surface (4g)

Kikuchi et al. does not teach Indicia on the body. It is clear from the disclosure of Kikuchi that the product hanger is intended for consumer display, therefore it is understood that an Indicia would be necessary on the body. All surfaces of the body

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are capable of receiving indicia therefore it is understood that at least half of the back layer would be covered. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to include Indicia on the body of Kikuchi et al.. The motivation being that it is necessary to indicate product information on a product display.

Further regarding claims 2,4-6; it can be seen from figure 3 of the disclosure of Kikuchi that surface 2a of the inner layer covers the area behind the hanging feature (21). Kikuchi also discloses a cut out portion (28) enabling grasping of the hanging feature (col. 4 ln. 5-8). Kikuchi et al. also discloses a fold line (23) joining the hanging feature to the backcard (col. 3 ln. 46-49) adjacent an upper edge (4b).

11. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. in view of Scrymgeour et al. (6,234,447). Kikuchi discloses a card package having an extendable hanging feature and surfaces capable of receiving indicia. Kikuchi does not disclose a tear strip in the outer layer with hidden indicia beneath it. Scrymgeour et al. teaches a card having an inner (114) and outer (102) layer with a tear strip (10) and Indicia (25) on the inner layer (14) hidden from view until revealed by tearing the tear strip (col. 5 ln. 25-34). Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to include a tearable strip as taught by Scrymgeour on the body of Kikuchi et al.. The motivation to

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include hidden indicia would be to entice customers to purchase a product by including the possibility of additional benefits, which are hidden from view at the time of purchase.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi and Scrymgeour as applied to claims 7-9 above, and further in view of Hustad (5,123,527). Kikuchi and Scrymgeour together teach a backcard having a hanging feature and a tear strip. Neither Kikuchi nor Scrymgeour show a utensil provided behind the tear strip. Hustad teaches a food package having multiple compartments and a backcard (36). Hustad teaches that it would be preferable to include a utensil with this package (col. 5 ln. 26-27). Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to include a utensil as taught by Hustad behind the tear strip as shown by Kikuchi and Scrymgeour. Although, Hustad does not teach including the utensil within the backcard, the motivation would be obvious were the backcard of a more sturdy construction as shown by Kikuchi.

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13. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hustad (5,123,527) alone. Hustad et al. shows a food product container featuring:

1.1. A top wall (11)

1.2. A plurality of compartments (13,14,15) with food products (col. 4 ln. 53-57)

1.3. A removable cover (19) transparent allowing viewing of food items

(col. 2 ln. 53-58)

1.4. The base portion of each the compartments are separated (fig. 1, fig. 5)

(as best understood in view of the 35 U.S.C. rejection)

1.5. A backcard (36) adhesively secured to base (col. 6 ln. 13-15)

a. Indicia on the backcard (col. 3 ln. 25-27)

b. Backcard having an inner and outer layer (col. 6 ln. 7; overlapping portion)

Hustad discloses a hanging feature protruding upward from the backcard (col. 3. ln. 4-8, item 92). In figure 16 Hustad shows a notch 42 and material above the notch capable of being pulled outward and upward from the backcard material. Hustad in claim 18 specifically claims a hanging feature intended for a pegboard. In col. 3 ln. 14-18 Hustad discloses the purpose of the notch was not for hanging. Hustad anticipated hanging the package using an extendable tab (col. 8 ln.8), although the configuration of the tab (91) varies from the construction of Applicant's tab. Similarities between the notch (42) of Hustad and hanging tabs as commonly used are obvious. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the notch of Hustad to be used a hanging feature. The motivation would be easily

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discovered if one desired to hang the package of Hustad, the notch being an upward protuberance capable of receiving a hanging rail.

14. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hustad as applied to claim 11-14 above, and further in view of Petzelt (4,838,424). Hustad shows a food packaging with hangable backcard having the features described above. Hustad does not disclose a tear strip concealing promotional information. Petzelt teaches a carton having a tear strip (34), which conceals promotional information (32). Accordingly it would have been obvious to one with ordinary skill in the art to modify the design of Hustad to include a tear strip as taught by Petzelt. The motivation being to increase the potential value of the product.

The shape of the tab of Hustad is seen as being semi-circular. Triangular shaped tabs are well known in the art. The examiner notes that offering a triangular shaped tab over a semi-circle brings no surprising advantages. Accordingly, it would have been obvious to one with ordinary skill in the art to use any shape tab on the backcard. The motivation being that a variety of shapes are well known in the art, triangular, square and semi-circular being the most common.

Regarding claim 16, it is required under the United States Code of Federal Regulations, 21CFR101.4 and 21CFR101.9 that any food product sold in the United States (with some exceptions) must have nutritional facts and a list of ingredients. Therefore these

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features are inherent in the design of Hustad. Accordingly, it would have been obvious to one with ordinary skill in the art to include nutritional facts and a list of ingredients on the backcard. The motivation being that this information is required and the front and sides of the package of Applicant do not offer the space necessary for this information.

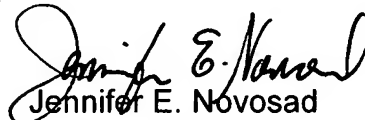
15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hustad, and Petzelt as applied to claims 15-19 above, and further in view of Kikuchi. Hustad and Petzelt disclose features relating to hanging a food package and including additional promotional means. Kikuchi teaches a hanging product display with a tab moveable from the backcard, where upon lifting the tab from the backcard additional information is displayed on the inner layer (col. 4 ln. 1-2). The examiner takes official notice that hang tabs often have information displayed on both sides containing promotional information, usually relating to size or price. Accordingly it would have been obvious to one with ordinary skill in the art to modify the design of Hustad, Prew, and Petzelt to included additional spaces for promotional information. The motivation being to maximize the utility of empty space available on a product package.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634


10/05/2005